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BY EMAIL ONLY

Dear [KCOM],

Late publication of KCOM's 2019/2020 Regulatory Financial Statements

I wrote to [KCOM] on 15 June 2021, explaining that Ofcom has been considering whether it is appropriate to open an investigation in relation to KCOM's late publication of its 2019/20 Regulatory Financial Statements (RFS) and its compliance with relevant SMP services conditions.¹ I am writing in response to KCOM's letter of 29 June 2021 in which [KCOM] set out [it's] reasons for the late publication of its 2019/2020 RFS.

As you know, following a request from KCOM and a consultation, the 2020 Hull Consent Statement set out Ofcom's consent to KCOM's request that its RFS and any corresponding audit opinion for the financial year 2019/20 be published and delivered to Ofcom by 31 December 2020.² However, KCOM did not publish its 2019/20 RFS until 25 May 2021.

We take compliance with all regulatory conditions seriously and we note the particular importance of SMP services conditions in promoting and protecting competition in a number of UK telecoms markets. While we consider the late publication of KCOM's RFS to be a serious matter, we have decided not to open an investigation at this time. We have reached this decision in line with the prioritisation criteria set out in Ofcom's Enforcement Guidelines.³

¹ SMP conditions OB6 of Schedule 2, Annex 3 of the July 2004 Statement on the regulatory financial reporting obligations on BT and Kingston Communications, 8.6 of Schedule 1, Annex 6 of the 2018 WLA and WBA Statement, and 7.6 of Schedule 4, Annex 26 of the 2019 BCMR Statement. These conditions require KCOM to publish its RFS and corresponding audit opinions within four months after the end of the period to which they relate unless Ofcom consents otherwise. KCOM is also required to provide to Ofcom copies of the RFS and any corresponding audit opinions, in the form in which they are ultimately to be published, at least two weeks before they are required to be published.

² https://www.ofcom.org.uk/data/assets/pdf_file/0037/198937/statement-kcom-defer-regulatory-financial-statements.pdf

³ https://www.ofcom.org.uk/data/assets/pdf_file/0015/102516/Enforcement-guidelines-for-regulatory-investigations.pdf

We have considered a number of factors in reaching this decision, including:

- the impact Covid-19 has had on KCOM in the preparation of its RFS and the extended publication deadline on the preparation of their statutory accounts, which had an impact on preparation of the RFS;
- KCOM regularly updated Ofcom during the delay in publication, and has now published the RFS, so any potential breach is not ongoing; and
- KCOM does not have a history of non-compliance in relation to the relevant SMP services conditions.

As such, we consider that an investigation into this issue would not be an appropriate use of Ofcom's limited resources at this time. However, Ofcom may well revisit this decision in future, if we consider it appropriate to do so.

While we are not opening an investigation, we remain concerned about KCOM's compliance with the relevant SMP Services Conditions, and we are not satisfied with the reasons that KCOM has provided to explain the late publication. KCOM has attributed the delay in publication of its RFS to:

- a delay in the preparation of KCOM's statutory accounts (which are needed for production of the RFS), in part a result of Covid-19;
- changes in KCOM's ownership and management, and the need for new personnel to establish confidence in the RFS before publication; and
- numerous additional unforeseen administrative delays, including delays in obtaining sign-off from KCOM's auditors.

We acknowledge the unprecedented strain Covid-19 has placed on businesses and society, and its related impact on the preparation of KCOM's statutory accounts. We also understand that the Government introduced temporary changes to filing requirements of statutory accounts which meant that KCOM's statutory accounts for 2019/20 did not need to be filed until 31 March 2021. While we note that KCOM's change in ownership may have caused some further disruption, KCOM should ensure that it has appropriate processes and systems in place to meet its regulatory obligations and plan appropriately to ensure that its ownership, managers, and auditors are able to undertake the necessary work and sign-off in a timely fashion.

While we have decided not to open an investigation as this time, we will be closely monitoring KCOM's compliance in future years, and we are prepared to take enforcement action where appropriate.

Please note Ofcom intends to set out our decision on this matter on our website. **We will therefore publish a copy of this letter on our website on Tuesday 5 October 2021.**

Yours sincerely,

Samuel Hinkley